IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1009 OF 2004

Sameer Barar and ors. .. Appellants

Vs.

Ratan Bhushan Jain & ors. .. Respondents

Mr. Anil Singh with Mr. D.R. Shah for appellants.

Mr. Girish Kulkarni with Ms. Rekha Tawade with Mr. Dinesh Joshi i/by M/s. M.V. Kini and Co. for Respondent Nos.1 to 11 and 15.

Mr. Nitin G. Raut for Respondent No.14.

CORAM: B.H. MARLAPALLE, J.

Date : July 11, 2005.

P.C.:

1. Heard Mr. Anil Singh with Mr. D.R. Shah, the learned counsel for the appellants, Mr. Girish Kulkarni with Ms. Tawade and Mr. Joshi i/by M/s. M.V. Kini and Co. learned counsel for Respondent Nos.1 to 11 and 15 and Mr. Raut, the learned counsel for the Respondent No.14.

2. This appeal arises from the order dated

5/11/2004 passed by the learned Judge of the City Civil Court at Mumbai dismissing Notice of Motion No.4144 of 2004 filed in S.C. Suit No.4748 of 2004.

3. The court below has noted that the inter se rights of the plaintiffs and defendants in respect of the suit property are governed by a consent decree passed by the Competent Court at Amritsar and in the said consent decree there is a provision for referring the disputes to arbitration. Clause 7 of the said family settlement states that all the parties shall be bound by the terms of the compromise and family settlement and they would undertake to remain bound forever by the terms agreed between them in the said agreement. Clause VI reads thus:-

> "VI. That in case of any dispute or difference of opinion regarding interpretation or implementation of any clause of this family settlement/agreement no party or member or his/her successor in interest shall go to a court of law and the same shall be settled through arbitration under the Indian Arbitration Act."

4. So far as Versova property is concerned, Clauses xv, xvi, xviii and xix as set out in the

consent decree are material and if they are read together, it is clear that any party having dispute of his/her share or any of the branches who have such a dispute will have to take resort to a remedy by way of arbitration proceedings. This clearly indicates that if any other party either from Group "A" or Group "B" proceeds further to execute the decree/consent terms, the remedy for any other aggrieved party is by way of arbitration proceedings irrespective of the quantum of share of such party. Under the circumstances, the trial court was right in holding that prima facie the powers for granting injunction could not be invoked when the suit itself will not be maintainable. It would be, therefore, advisable for the appellants/plaintiffs to initiate the arbitration proceedings and seek appropriate remedy. No fault could be found with the view taken by the trial court in refusing to entertain the Notice of Motion for temporary injunction.

5. The appeal is, therefore, dismissed in limine.

(B.H. Marlapalle,J.)